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July 15, 1983

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In the Matter of  
Kansas Gas and Electric Company, et al.  
(Wolf Creek Generating Station, Unit 1)  
Docket No. 58-482

Gentlemen:

In a June 13, 1983 letter, Applicants provided to the Board and the other parties a compilation of Intervenor's interrogatory answers which -- by agreement of the parties -- is to serve as the statement of issues for litigation in this proceeding. On June 20,

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1983, Intervenor's counsel conferred with Applicants' counsel to request modifications to the June 13 compilation of interrogatory answers. As a result of those discussions, Applicants agreed to certain of the requested modifications, which are memorialized in Applicants' June 21 letter to the Board. Counsel for Intervenor's also proposed other modifications and expansions of the designated interrogatory answers in the June 20 discussions, as to which Intervenor's and Applicants were unable to reach agreement. By letter dated June 22, 1983, counsel for Intervenor's advances for Board ruling the modifications and expansions of interrogatory answers which Applicants oppose. Applicants respond herein to that June 22 letter.

In paragraph 3 of the June 22 letter, Intervenor's propose that the following language be added to the compilation as Contention 29.w [sic; 29.v]:

If a duty is assigned to a person  
that person is not adequately trained  
to handle that duty and would not  
be able to adequately handle that duty  
in an emergency.

As Intervenor's note, this language is a reiteration of part of one of their interrogatory answers. However, unlike the interrogatory answers which have been included in the compilation, the proposed language is overly broad in the extreme. This is particularly true in light of the advanced stage of the proceeding, where discovery has long been completed and the date for filing of testimony is only one and one-half months away. Under such circumstances, the Board and the other parties are entitled to know precisely who Intervenor's assert must be trained and what Intervenor's assert they must be trained in. Indeed, Intervenor's provided the requisite level of specificity on this issue in their interrogatory responses elsewhere, identifying a very long "laundry list" of emergency workers alleged to need training, along with an indication of the areas in which training is purportedly necessary. See, e.g., Contentions 29.h(1) through 29.h(26), at Compilation pp. 32-35, and Contentions 29.s(1) through 29.s(8), at Compilation pp. 36-37, and Contentions 29.u(1) and 29.u(2), at Compilation p.37.

Nevertheless, apparently concerned that they may have neglected to list someone, Intervenor's advance the proffered language in an attempt to preserve their options to litigate at the hearing at the need for training any individuals they may have failed to include on their list. If Intervenor's later find that they have failed to raise the need for training of a particular group of workers, they are entitled to amend their contentions to include that issue, upon the requisite showing. See Duke Power Co. (Catawba Nuclear Stations, Units 1 and 2),

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CLI-83-19, 17 N.R.C. \_\_\_\_ (June 30, 1983). But, particularly in light of the advanced stage of the proceeding, the "catch-all" contention here proposed must be rejected.

Paragraph 4 of the June 22 letter proposes that the following language be added to the compilation as Contention 32.c.:

The estimates of costs are very difficult to determine. For example, we have assumed that certain vehicles might be rented. Perhaps, they might actually be purchased. Also, it is very difficult to determine the number of days that evacuees would need to be sheltered, and it is difficult to estimate the number of serious injuries that can occur. Changes in these estimates can substantially effect [sic] the total number of dollars that will be required from Coffey County.

This language is simply a generalized statement of the assumptions and uncertainties underlying Intervenor's estimates elsewhere of certain costs, and is not appropriate for litigation. Accordingly, proposed Contention 32.c should be rejected:

Finally, Intervenor's propose the expansion of approximately 65 of the interrogatory answers reflected in the June 13 compilation, to include reference to the evacuation of the entirety of Coffey County.\*/ See June 22, 1983 letter, at ¶¶ 2, 5. As counsel for Intervenor's observes, all parties have agreed that:

The scope of the issues to be litigated excludes the ability to evacuate or shelter the people living outside the Plume Exposure Pathway EPZ but inside Coffey County. The scope includes the effect on evacuation of the Plume Exposure Pathway EPZ of an order to evacuate the entire County. (See Applicants' Objections, pp. 12-13).

Letter, Counsel for Applicants to Board (May 19, 1983), at 2. However, the cited agreement -- reached in the course of May 16 and 18 conference calls among the parties -- was in resolution of Applicants' objection to the inclusion in the compilation of specified individual interrogatory responses which expressly raised the issue of the evacuation of the entire county rather than of only the plume EPZ. The parties did not agree, in the mid-May calls, that language expanding interrogatory answers to include the evacuation of the entire county could be added to interrogatory answers where it has never before appeared. Rather, the parties agreed only that the language about the entirety of Coffey County could remain in the interrogatory answers where Intervenor's had already included it, provided that the language was inter-

\*/ For the convenience of the Board, Applicants have correlated the contentions referenced by Intervenor's with the underlying interrogatory answers. This correlation is attached hereto as Appendix A.



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puted consistent with the scope of the hearing as noted. Certainly, in the May 16 and 18 conference calls, counsel for Intervenor did not advance his list of 65 additional interrogatory answers which he now proposes to expand to encompass an evacuation of the entire county.

Conspicuously, and in contrast to their argument on other proposed amendments to the compilation, Intervenor does not assert that each of the approximately 65 proposed changes reflects an omission from the compilation of language which was included in interrogatory answers. Nor could they make such an assertion. The following contentions are based on interrogatory responses (specified by Intervenor), which responses include no reference whatsoever to the entirety of Coffey County: 1.l, 2.c, 3.a, 7.a, 9.c, 9.e, 10.a-10.d, 11.c, 11.d, 11.f, 11.g, 11.i, 11.j, 11.k, 11.l, 12.f, 12.g, 13.a, 13.b, 14.b, 16.a-16.d, 16.f-16.h, 16.k-16.n, 18.c, 18.e, 18.h, 18.k, 18.q, 18.r, 18.y, 18.aa, 19.k, 19.hh, 19.ll, 20.l, 21.b, 22.b, 23.a, 23.b, 24.b, 24.c, 31.f, 31.j, 32.a and 32.b. Accordingly, Intervenor's request that these contentions be expanded to encompass evacuation of the county beyond the EPZ should be summarily rejected.

Other contentions listed by Intervenor are based on interrogatory answers which do include some language which might be interpreted to raise the issue of the evacuation of the entire county, but which are logically not litigable under the scope of the hearing as agreed upon by the parties in the May 16 and 18 phone calls. These contentions include 11.a, 11.b (also discussed in ¶ 5.c of June 22 letter), 11.e, 11.h, 12.e, and 15.n. These contentions are addressed below.

Contentions 11.a, 11.b, 11.e and 11.h are addressed to public notification of an emergency, and the provisions for sirens and tone alerts to effect such notification. The Commission's emergency planning regulations require only a capability for timely notification of the public within the plume EPZ. See 10 C.F.R. §§ 50.47(b)(5), 50.47(c)(2). Any contention to the contrary would constitute an impermissible challenge to the regulations. See 10 C.F.R. § 2.758. And certainly Intervenor has provided no indication how a failure to notify County residents outside the EPZ within the time limits of 10 C.F.R. Part 50, Appendix E, § IV.D.3 would in any way impede the evacuation of residents inside the EPZ. For these reasons, the proposed expansion of Contentions 11.a, 11.b, 11.e and 11.h must be rejected.

Contention 12.e challenges the provisions for the dissemination of written emergency public education materials to transients. Again, the Commission's regulations require the dissemination of such materials only within the plume EPZ, see 10 C.F.R. §§ 50.47(b)(7), 50.47(c)(2), and the litigation of any contention to the contrary is barred as a challenge

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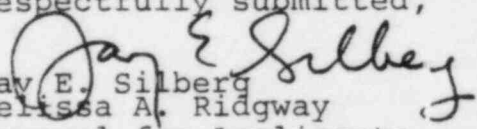
to the regulations. Further, the proposed expansion lacks basis; Intervenor's have failed to identify any concentrations of transients which are within the County but outside the plume EPZ. Moreover, Intervenor's have not suggested how any failure to provide emergency public education materials to transients outside the EPZ could adversely affect the evacuation of individuals inside the EPZ. Accordingly, Intervenor's' proposed expansion of Contention 12.e must be rejected.

Contention 15.n asserts that the County Health Nurse has not compiled a list of shut-ins and others who may need special evacuation assistance. The Commission's regulations require emergency planning, including provisions for protective actions, only within the plume EPZ. See 10 C.F.R. §§ 50.47(b)(10), 50.47(c)(2). Thus, again, the litigation of evacuation assistance for County residents outside the EPZ is barred as a challenge to the regulations. Moreover, the preparation of such a list is a pre-emergency activity, and Intervenor's have not explained how the advance preparation (or lack thereof) of a list of shut-ins outside the EPZ would adversely affect the resources available at the time of an emergency for the evacuation of the population inside the EPZ. Therefore, the proposed expansion of Contention 15.n must also be rejected.

Intervenor's have also referenced Contentions 18.z, 20.d, 20.k, and 24.d in their June 22 letter. These contentions (as well as others not listed by Intervenor's) already incorporate language referring to the impact of order to evacuate the entire County on the evacuation of the plume EPZ, and thus need not be the subject of Board ruling.

Finally, in the concluding paragraph of the June 22, 1983 letter, counsel for Intervenor's represents that Intervenor's' concurrence in the June 13 compilation as the statement of issues for litigation is dependent on a ruling in Intervenor's' favor on the additions and expansions requested in Intervenor's' June 22 letter. The parties' agreement to accept the compilation, based on the mid-May and June 20 telephone conferences, was unconditional, though it was understood that counsel for Intervenor's might seek to amend the compilation, as reflected in the letters of counsel memorializing those conferences. See Letters Counsel for Applicants to Board, dated May 19, June 13 and June 21, 1983. Counsel should not be permitted to repudiate his agreements of record.

Respectfully submitted,

  
Jay E. Silberg  
DeLissa A. Ridgway  
Counsel for Applicants

Enclosure

cc: Service List (w/encl. including App. A)

APPENDIX A

<u>Contention</u>	<u>Specification of Underlying Interrogatory Answer</u>
1f	item 1 under §1.2.2 on p.14
2c	item 1 under §4.2.1 on p.41
3a	item 2 under EP-12 on p.7; item 10 under §1.2.2 on p.15; item 1 under §4.2.2. on p.41
7a	item 3 under Table 3-5 on p.40
9c	item 11 under §3.3 on p.29
9e	Special Contention #4 on p.5
10a	item 2 under §1.2.5
10b	item 15 under EP-4 on p.3; EP-5 on p.4; item 6 under EP-5 p.4; item 4 under §1.2.5 on p.8
10c	item 4 under EP-12 on p.7; item 4 under §1.2.5 on p.18
10d	item 3 under §1.2.5 on p.18
11a	item 8 under §3.2 on p.26
11b	item 10 under §3.2 on p.27
11c	item 3 under EP-12 on p.12
11d	Special Contention 3 on p.5
11e	item 10 under §3.2 on p. 27
11f	item 2 under EP-4 on p.1; EP-5 on p.3
11g	item 2 under EP-12 on p.9
11h	item 5 under §3.2 on p.26
11i	item 12 under §3.2 on p.27
11j	item 12 under §3.2 on p.27
11k	item 7 under §3.2 on p.26
11l	item 13 under §3.2 on p.27
12e	item 3 under §5.3 on p.43
12f	Special Contention 5 on p.5.
12g	item 2 under §5.3 on p.43
13a	item 8 under §3.3 on p.28
13b	item 15 under EP-12 on p.9; item 1 under Table 3-2 (Sheet 8 of 15) on p.38
14b	item 10 under EP-12 on p.8; item 1 under §3.31 on p.29
15n	item 6 under §1.2.7 on p.21
16a	item 8 under §1.2.5 on p.18
16b	EP-4 on p.2
16c	item 12 under EP-5 on p.5
16d	item 12 under EP-5 on p.5
16f	item 5 under §3.5 on p.32
16g	item 5 under §3.5 on p.32
16h	item 9 under EP-4 on p.2; item 3 under EP-5 on p.3
16k	item 5 under §3.5 on p.32
16l	item 6 under EP-12 on p.8; item 2 under §3.5 on p.32
16m	item 9 under §1.2.5 on p.19
16n	item 6 under EP-12 on p.8; item 2 under §3.5 on p.32

ContentionSpecification of Underlying Interrogatory Answer

18c	item 4 under Table 1-1 on p.25
18e	item 7 under EP-4 on p.2; EP-5 on p.4; item 2 under EP-5 on p.3
18h	item 4 under Table 1-1 on p.25
18k	item 2 under §3.3 on p.27
18q	item 4 under §3.6 on p.33
18r	item 2 under §3.6 on p.33
18y	item 7 under §1.2.2 on p.15
18z	item 4 under EP-5 on p.3
18aa	item 7 under §1.2.2 on p.15
19k	EP-4 on p.2; item 10 under EP-5 on pp.4-5; items 4,6,8 on p.34
19hh	item 2 under §3.7 on p.33; item 1 under Tab K on p.47
19ll	item 5 under §3.7 on p.34
20d	item 7 under EP-5 on p.4
20k	item 7 under §1.1 on p.12
20l	item 8 under §3.8 on p.36
21b	item 2 under §1.2.7 on p.20
22b	Special Contention 7 on p.5
23a	item 5 under Table 1-1 on p.25
23b	EP-4 on p.2; item 11 under EP-5 on p.5
24b	item 6 under §1.2.3 on p.16
24c	item 9 under §3.3 on p.28
31f	item 8 under EP-12 on p.10
31j	item 3 under Tab A on p.44
32a	EP-15 & 16 at 10-11; EP-15 & 16 at 10-11; ¶6(g) at 7
32b	EP-15 & 16 at 10-11; EP-15 & 16 at 10-11; ¶6(g) at 7



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
KANSAS GAS AND ELECTRIC COMPANY, et al. ) Docket No. STN 50-482  
 )  
(Wolf Creek Generating Station, )  
Unit No. 1) )

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